

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA FOR §
THE USE, AND BENEFIT OF §
AREA IRON & STEEL WORKS, INC., §
§
Plaintiff, §
§
vs. § Cause No. 3:16-CV-00030 §
§
SOLIS CONSTRUCTORS, INC., §
and TRAVELERS CASUALTY AND SURETY §
COMPANY OF AMERICA §
§
Defendants. §

COMPLAINT

Plaintiff, AREA IRON & STEEL WORKS, INC., ("Plaintiff") alleges as follows:

JURISDICTION AND PARTIES

1. This Court has jurisdiction and venue. This Court has federal jurisdiction pursuant to §1331 of Title 28 of the United States Code because this case is brought under the Miller Act (40 U.S.C. § 270(a)-(e)). The other claims for relief are pendent, supplemental and inextricably intertwined with the claim under the Miller Act. The claims in this case concern a federal public works construction project, wherein Plaintiff, as a subcontractor for SOLIS CONSTRUCTORS, INC., performed labor and/or furnished materials at the project, consisting generally of structural steel, steel joist framing, steel decks, metal fabrication and welding and aluminum cross over stairs on the project known as: Project: El Paso Intelligence Center Expansion, 11339 SSG Sims St., Fort Bliss, Texas, Contract No.: W9126G-14-D-0001-003 located in El Paso County, Texas; thus, venue is proper in this United States District Court for the Western District of Texas.

2. Plaintiff, AREA IRON & STEEL WORKS, INC., is now, and was at all times mentioned in this complaint, a corporation duly organized and existing under and by virtue of the laws of the State of Texas with its principal office and business located in the City of El Paso, El Paso County, Texas.
3. Defendant, SOLIS CONSTRUCTORS, INC. ("SOLIS"), is, and at all times herein mentioned was, a duly organized foreign for profit corporation existing pursuant to the laws of the State of Texas with its principal place of business in Austin, Texas and may be served by serving its registered agent/director, J. Edward Lowenberg, or its vice president, Stephen Cervantes, or any other corporate representative, at 9100 United Drive, Suite 106, Austin, Texas 78758-7716 or at any other such place he/she may be found.
4. Defendant, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA (TRAVELERS), is now, and was at all times in this complaint mentioned, a foreign insurer, authorized to do business in the State of Texas and may be served by serving its registered agent, CT SERVICE COMPANY, at 211 East 7th Street, Suite 620, Austin, Texas 78701.

FIRST CAUSE OF ACTION
(ACTION UPON MILLER ACT PAYMENT BOND)

5. Plaintiff, AREA IRON & STEEL WORKS, INC., hereby incorporates by reference paragraphs 1-4 as though fully set forth herein.
6. SOLIS entered into a Prime Contract ("the Prime Contract") with U.S. Army Corps of Engineers, Fort worth District, to perform the federal public works project known as El Paso Intelligence Center Expansion, located at 11339 SSG Sims St., Fort Bliss, Texas, 79918-8033, bearing Contract No.: W9126G-14-D-0001-0003, ("the Project").

7. AREA IRON & STEEL WORKS, INC. is informed and believes, and therefore alleges, that TRAVELERS executed and delivered, as surety, a certain payment bond ("the Payment Bond") guarantying the payment to all persons supplying labor or materials in the prosecution of the work on the Project.
8. On or about October 27, 2014, and during the course, performance, and prosecution of the Project, AREA IRON & STEEL WORKS, INC., as subcontractor, entered into a written subcontract/purchase order ("the Subcontract") with SOLIS, pursuant to which AREA IRON & STEEL WORKS, INC., agreed to, but not limited to, the Scope of Work described in the Plans and Specifications and in Plaintiff's Purchase Order #144-7-051200, including all labor, materials, equipment, services, and other items required to complete such portion of the work, as more particularly detailed on the Subcontract Agreement and Purchase Order between AREA IRON & STEEL WORKS, INC.'s and SOLIS, a copy of which is attached hereto and incorporated by reference for all purposes as Exhibit "A".
9. Pursuant to the Subcontract, SOLIS agreed to pay \$228,000.00 for said labor and materials, plus additions and deductions for changes in the work of the Subcontract.
10. On various dates and at the special instance and request of SOLIS, AREA IRON & STEEL WORKS, INC.'s GLASS, INC., was required to submit proposals and change orders.
11. AREA IRON & STEEL WORKS, INC. is informed and believes, and thereupon alleges, that it duly performed or was excused from performing all things and conditions on its part to be performed under the Subcontract.

12. AREA IRON & STEEL WORKS, INC. is informed and believes, and thereupon alleges, that SOLIS breached and/or abandoned the Subcontract and failed to pay for work leaving an unpaid balance now due and owing to AREA IRON & STEEL WORKS, INC. in the sum of \$85,124.79.
13. AREA IRON & STEEL WORKS, INC. is informed and believes, and thereupon alleges, that it duly performed or substantially performed all things and conditions on its part to be performed under the Payment Bond.
14. SOLIS and TRAVELERS have not paid AREA IRON & STEEL WORKS, INC. for said labor, materials furnished, stored materials to be used on the Project, or lost profits, as aforesaid and the balance thereof unpaid the time of the commencement of this action is \$85,124.79.
15. Less than one year and more than ninety days have elapsed after the date on which the last of said labor and materials were furnished.
16. Plaintiff seeks its reasonable and necessary attorney's fees on its Miller Act claim.

**SECOND CAUSE OF ACTION
(BREACH OF CONTRACT)**

17. Plaintiff, AREA IRON & STEEL WORKS, INC., hereby incorporates by reference paragraphs 1-16 as though fully set forth herein.
18. Pursuant to the Subcontract, AREA IRON & STEEL WORKS, INC. agreed to furnish labor, material, equipment and supervision to perform certain work.
19. SOLIS agreed to pay the original contract amount of \$228,000.00 for said labor and materials, plus additions and deductions for changes in the work of the Subcontract to AREA IRON & STEEL WORKS, INC., subject to additions and deductions for changes for AREA IRON & STEEL WORKS, INC.'s work on the Project.

20. AREA IRON & STEEL WORKS, INC. is informed and believes, and thereupon alleges, that it duly performed or was excused from performing all things and conditions on its part to be performed under the Subcontract.
21. AREA IRON & STEEL WORKS, INC., is informed and believes, and thereupon alleges, that Defendant, SOLIS has breached the Subcontract, inter alia, by:
 - a. failing to pay all amounts due under the Subcontract;
 - b. failing to make timely and complete progress payments;
 - c. failing to comply with the requirements of the implied covenants;
 - d. failing to obtain and/or oversee the Project causing acts and/or omissions from third parties whose consent and cooperation was required to enable AREA IRON & STEEL WORKS, INC. to timely perform;
 - e. requiring AREA IRON & STEEL WORKS, INC. to provide labor, services, equipment and materials other than those prescribed in the Subcontract without compensation therefore;
 - f. requiring AREA IRON & STEEL WORKS, INC. to provide labor, services, equipment and materials or to pay for others labor, services, equipment and materials or both beyond the requirements of the Subcontract without properly negotiating and issuing change orders therefore;
 - g. failing to timely perform the things and conditions to be performed by Defendants on their part, including without limitation, the timely supply of materials and labor;
 - h. interfering with or otherwise disrupting, and delaying the performance by AREA IRON & STEEL WORKS, INC. of the Subcontract;
 - i. exercising the authority and discretion allowed to Defendant under the Subcontract in an unreasonable, arbitrary and capricious manner.
22. As a direct and proximate result of the aforementioned breaches by Defendants SOLIS and TRAVELERS , AREA IRON & STEEL WORKS, INC.:
 - a. has not been paid the balance due under the Subcontract and has lost use of that money;

- b. has lost the use of progress payments which were not timely paid (31 U.S.C. § 3905(e)(4)) and the interest that would have been earned on the retention portion of those progress payments if that portion had been timely paid;
- c. has lost profits that would have been earned on the Subcontract and that would have been earned on other contracts, but for the additional commitment required for this Subcontract;
- d. incurred expenses to provide labor, services, equipment and materials (plus overhead thereon and lost profits therefor) which were not required under the Subcontract;
- e. incurred additional expenses (plus overhead thereon and lost profits therefor) for the performance of the Subcontract due to disruption, and delay of the Project; and
- f. incurred costs, expenses, and attorney's fees to collect amounts reasonably due from Defendants.

23. All of the above AREA IRON & STEEL WORKS, INC. damages are in an amount not yet fully ascertained (but approximately \$85,124.79) and when ascertained this pleadings will be amended to state the correct amount, plus prejudgment interest thereon at the lawful rate, plus applicable penalties under 31 U.S.C. §3905(e)(4). AREA IRON & STEEL WORKS, INC., has demanded payment from Defendants SOLIS and TRAVELERS, but Defendants have failed and refused, and continue to fail and refuse to pay.

24. In order to present this claim and prosecute this action, AREA IRON & STEEL WORKS, INC. has been compelled to employ attorneys and seeks its reasonable and necessary attorney's fees on its breach of contract claim.

THIRD CAUSE OF ACTION
(ACCOUNT)

25. In the alternative but without waiving the foregoing, at the special insistence and request of SOLIS, AREA IRON & STEEL WORKS, INC. provided labor, furnished materials, and stored materials to be used on the Project to SOLIS and TRAVELERS .

26. AREA IRON & STEEL WORKS, INC. sold such service and materials in the regular course of its business in consideration whereof, SOLIS and TRAVELERS promised and agreed to pay and became bound and obligated to pay the prices therefore charged.
27. There is a balance due and owing on the account in the sum of \$85,124.79.
28. It seeks its reasonable and necessary attorneys fees for the presentation of this claim on account.

FOURTH CAUSE OF ACTION
(QUANTUM MERUIT)

29. In the alternative, but without waiving the foregoing, SOLIS and TRAVELERS with full knowledge and consent received the benefits of the services and materials furnished by AREA IRON & STEEL WORKS, INC..
30. Accordingly by implication SOLIS and TRAVELERS agreed to pay AREA IRON & STEEL WORKS, INC. the reasonable value of the labor, furnished materials, and stored materials to be used on the Project in the sum of \$228,000.00 for said labor and materials, plus additions and deductions for changes in the work of the Subcontract.
31. There is a balance due and owing on Plaintiff's quantum meruit in the sum of \$85,124.79.
32. AREA IRON & STEEL WORKS, INC. seeks reasonable and necessary attorney fees in the action on quantum meruit.

WHEREFORE PREMISES CONSIDERED, AREA IRON & STEEL WORKS, INC. prays for judgment as follows:

1. for judgment against Defendants, SOLIS and TRAVELERS on the payment bond, joint and severally, in the amount of \$85,124.79;

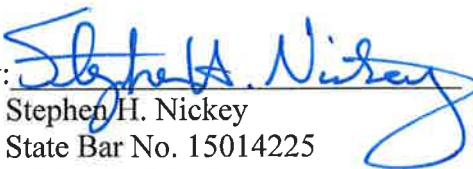
2. for interest thereon at the prevailing legal rate;
3. for statutory penalties pursuant to 31 U.S.C. § 3905(e)(4) and as otherwise allowed by law;
4. for attorney's fees through trial and appeal, plus costs; and
5. for such other and further relief as the Court deems just and proper.

DATED: January 22, 2016

Respectfully submitted,

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